



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

June 13, 1991

Mr. David P. Ryan
Attorney for Corsicana ISD
Henslee, Ryan & Groce
3432 Greystone Drive, Suite 200
Austin, Texas 78731

OR91-278

Dear Mr. Ryan:

You ask whether a "needs assessment survey" conducted by the Corsicana Independent School District is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12304.

We have considered the exceptions you claimed, specifically sections 3(a)(1) and 3(a)(11), and have reviewed the documents at issue. The documents at issue consist of (1) the actual survey forms filled out by district employees, (2) transcribed responses, and (3) tabulated results available to date.

You suggest that the requested information is confidential under the common-law doctrine of privacy as enunciated in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976) *cert denied*, 430 U.S. 931 (1977). The concerns and opinions of school district employees with respect to the conditions of their public employment and with respect to the performance of the district's administration in conducting the public's business is of obvious public concern. Accordingly, the information is not within the scope of the common-law privacy doctrine. *Id.* at 685. We also feel compelled to note that the district's promises of confidentiality are of no moment in considering whether any of the requested information is subject to public disclosure under the Open Records Act. See, e.g., Open Records Decisions Nos. 514 (1988); 484, 479 (1987); *see also Industrial Foundation, supra*, at 677.

With respect to your claim for exception under section 3(a)(11), which excepts interagency and intra-agency memoranda to the extent that they contain advice, opinion, or recommendation, a previous determination of this office, Open Records Decision No. 538 (1990), a copy of which is enclosed, resolves your request in part. The availability of the intra-agency memorandum exception is not dependent on the anonymity of the author of the memorandum. As the survey responses consist of the opinions and recommendations of the responding employees, we find they are properly excepted from required public disclosure under section 3(a)(11). As the transcribed responses are merely the same information typed rather than handwritten, we likewise agree that these transcriptions are within the exception. However, the questionnaire itself, having not been completed by a respondent, contains no advice, opinion, or recommendation and is subject to required disclosure.

With respect to the tabulated results, this office has previously held that statistical summaries of similar opinion surveys are not excepted from required public disclosure under section 3(a)(11). Open Records Decisions Nos. 419 (1984); 209 (1978).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-278.

Yours very truly,

A handwritten signature in black ink, appearing to read 'John Steiner', with a large, sweeping flourish extending to the right.

John Steiner
Assistant Attorney General
Opinion Committee

JS/lb

Ref.: ID# 12304, 12489

Enclosure: Open Records Decision Nos. 538, 514, 484, 479, 419, 209

cc: Charlie Harrist
Managing Editor
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